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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-010]

Crystalline Silicon Photovoltaic Products from the People's Republic of China: Notice of Court Decision Not in Harmony with Final Determination of the Less Than Fair Value Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On May 25, 2018, the United States Court of International Trade (the Court) entered final judgment sustaining the final results of the second remand redetermination by the Department of Commerce (Commerce) pertaining to the antidumping duty (AD) investigation of certain crystalline silicon photovoltaic products from the People's Republic of China (China). Commerce is notifying the public that the final judgment in this case is not in harmony with Commerce's final determination in the AD investigation of certain crystalline silicon photovoltaic products from China.

DATES: Applicable June 4, 2018.

FOR FURTHER INFORMATION CONTACT: Eli Lovely, AD/CVD Operations, Office IV, Enforcement and Compliance – International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC, 20230; telephone (202) 482-1593.

SUPPLEMENTARY INFORMATION:

[Background](#)

Subsequent to the December 23, 2014, publication of the *Final Determination* in the AD investigation of certain crystalline silicon photovoltaic products from China,¹ and the February 18, 2015 publication of the AD order,² SolarWorld Americas, Inc. (SolarWorld), the petitioner, filed a complaint with the Court challenging, among other things, Commerce's determination that South African import data under subheading 8548.10, of the United States Harmonized Tariff Schedule (HTS), constituted the best available information for valuing Changzhou Trina Solar Energy Co., Ltd.'s (Trina) byproduct offset for scrapped solar modules.³

In *Jinko Solar I*, the Court remanded Commerce's use of South African import data under HTS subheading 8548.10, to value Trina's byproduct offset for scrapped solar modules when calculating normal value. The Court found that Commerce did not adequately explain how its decision was reasonable in light of the record as a whole.⁴ Further, the Court found that two arguments made before the Court constituted post hoc rationalizations and directed Commerce to make those rationalizations explicit and identify supporting evidence for them, if either of the rationalizations informed Commerce's decision to rely on HTS subheading 8548.10 to value Trina's byproduct offset for scrapped solar modules.⁵

On August 2, 2017, Commerce issued its First Remand Results, in which it determined that it would continue to value Trina's byproduct offset for scrapped solar modules with South

¹ See *Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Final Determination of Sales at Less than Fair Value*, 79 FR 76970 (December 23, 2014) (*Final Determination*).

² See *Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Antidumping Duty Order; and Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 80 FR 8592 (February 18, 2015).

³ See SolarWorld's Complaint, No. 15-00086, ECF No. 10 (CIT April 17, 2015).

⁴ See *Jinko Solar Co., Ltd. v. United States*, 229 F. Supp. 3d 1333, 1353-1355 (CIT 2017) (*Jinko Solar I*).

⁵ *Id.* at 1355.

African import data under HTS 8548.10 and explained its decision to do so.⁶ The Court, in *Jinko Solar II*, held that Commerce’s determination remained unsupported by substantial evidence and that Commerce did not explain how its selected surrogate value was a representative surrogate value for the scrapped modules.⁷ The Court directed Commerce to reconsider or further explain its decision to use South African import data under HTS subheading 8548.10 to value the byproduct offset for scrapped solar modules when calculating normal value.⁸

On March 12, 2018, Commerce issued its Second Remand Results, wherein, considering the Court’s order, and under respectful protest, Commerce selected Thai import data under HTS category 2804.69 to value Trina’s byproduct offset for scrapped solar modules for purposes of its normal value calculations.⁹

On May 25, 2018, the Court issued its decision in *Jinko Solar III* sustaining Commerce’s Second Remand Results.¹⁰

Timken Notice

In its decision in *Timken*,¹¹ as clarified by *Diamond Sawblades*,¹² the United States Court of Appeals for the Federal Circuit held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of a court decision that is not “in harmony” with a Commerce determination and must suspend liquidation of entries pending a

⁶ See Final Results of Redetermination Pursuant to Court Remand, *Jinko Solar Co., Ltd. v. United States*, Court No. 15-00080, Slip Op. 17-62 (Court of International Trade May 18, 2017) (August 2, 2017) (First Remand Results).

⁷ See *Jinko Solar Co., Ltd. v. United States*, 279 F. Supp. 3d 1253, 1261-1264 (CIT 2017) (*Jinko Solar II*).

⁸ *Id.* at 1264.

⁹ See Final Results of Second Redetermination Pursuant to Court Order, *Jinko Solar Co., Ltd., et al. v. United States*, Court No. 15-00080, Slip Op. 17-165 (Court of International Trade December 13, 2017) (March 12, 2018) (Second Remand Results).

¹⁰ See *Jinko Solar Co., Ltd. v. United States*, No. 15-00080, Slip Op. 18-61 (CIT May 25, 2018) (*Jinko Solar III*).

¹¹ See *Timken Co. v. United States*, 893 F.2d 337, 341 (Fed. Cir. 1990).

¹² See *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010).

“conclusive” court decision. The Court’s May 25, 2018, final judgment sustaining Commerce’s Second Remand Redetermination constitutes a final decision of the Court that is not in harmony with Commerce’s *Final Determination*. This notice is published in fulfillment of the publication requirements of *Timken*. Accordingly, Commerce will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal, or if appealed, pending a final and conclusive court decision. We have not amended the *Final Determination* because valuing Trina’s scrapped solar modules using Thai import data under HTS category 2804.69 rather than South African import data under HTS subheading 8548.10 did not result in a change to the weighted average dumping margin calculated for Trina in the *Final Determination*.

Notification to Interested Parties

This notice is issued and published in accordance with section 516A(e)(1) of the Act.

Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

June 4, 2018

Date

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